



Towards A New Chapter 40B: Proposed 2003 Legislation

Fall 2003

Jane Wallis Gumble, Director, DHCD

Clark Ziegler, Executive Director, MHP



Highlights

- The Basics of Chapter 40B
- The Proposed Changes
 - Planning for Housing
 - Affirmative Defenses for Your Community
 - Other Provisions
 - Getting to 10%



The Basics of 40B





What is Chapter 40B ?

- Enacted in 1969, Chapter 40B is a state statute, the Comprehensive Permit Law
- Enables local Zoning Boards of Appeals (ZBAs) to approve affordable housing developments under flexible rules if at least 25% of units have long-term affordability restrictions





What is the intent of Chapter 40B?

- In 1969 – recognition that zoning practices play a role in driving up housing costs and inhibiting the broad distribution of affordable housing
- In 2003 – to address the shortage of affordable housing statewide by reducing unnecessary barriers created by local zoning and other restrictions





What are the Benefits of Chapter 40B?

- Increases the supply of low/moderate income housing
- Improves regional distribution of low/moderate income housing
- Allows town boards and committees to work cooperatively and simultaneously with the ZBA to structure a project





What are the Basic Requirements for 40B Developments?

- The project must have a project eligibility letter issued by a state or federal subsidy program
- The project developer must have site control
- At least 25% of the units in the proposed project must be restricted over time for rent or sale to households at or below 80% of area median income
- Profit is limited: the development entity must be a public agency, a nonprofit organization, or a limited dividend organization



The Proposed Changes





Recent Regulatory Changes

- Three rounds of regulation changes from 2001-2003
- 2002 regulations incorporated Chapter 40B changes adopted by the legislature in the 2002 Housing Bill
- 15 total regulation changes increasing local control over development





Proposed Legislative Changes

- Chapter 40B Task Force
 - Convened by Governor Romney in February 2003 and composed of legislators, state housing officials, municipal and regional officials, and stakeholders representing development, community, and environmental interests
 - Endorsed regulation changes promulgated by DHCD
 - Recommended 17 additional changes to improve the Chapter 40B process and increase planning and local control over development





Proposed Legislative Changes

- 2003 Chapter 40B Legislation
 - “An Act Promoting Affordable Housing and Community Planning in the Commonwealth”
 - Drafted by the Joint Committee on Housing and Urban Development
 - HUD Committee Chairs served on the Chapter 40B Task Force





Proposed Legislative Changes

- 2003 Chapter 40B Legislation
 - Incorporates regulations and Task Force recommendations into Chapter 40B
 - **Allows mixed uses in Chapter 40B developments**
 - **Emphasizes planning and smart growth**
 - **Eliminates general land area minimum, which encourages sprawl development**





Planning for Housing

What's the best way to get to 10%?

Plan, Plan, Plan!!!





Planning for Housing

Planned Production

If a community adopts a plan to meet its low or moderate income housing need and has that plan approved by DHCD, and then complies with the production goals of that plan, it may deny comprehensive permits.





Planning for Housing

Planned Production – Elements

- Addresses a mix of housing
- Identifies a housing strategy
- Identifies characteristics of preferred projects
- Describes use restrictions
- Identifies zoning districts that can or will accommodate housing
- Identifies sites (or their characteristics) that are appropriate for housing





Planning for Housing

Planned Production – Benefits

Key Benefit:

- **Communities have control over how, when, and where housing is built.**





Planning for Housing

Planned Production – Benefits

Create 0.5% = deny comprehensive permits for 1 year

Create 1.0% = deny comprehensive permits for 2 years

Create 1.5% = deny comprehensive permits for 3 years





Planning for Housing

Planned Production – Example

If a community with 5,000 housing units had an approved plan and it:

- created 25 eligible housing units, it could deny comprehensive permits for 1 year.
- created 50 eligible housing units, it could deny comprehensive permits for 2 years.
- created 75 eligible housing units, it could deny comprehensive permits for 3 years.





Comprehensive Permits Affirmative Defenses

What's an affirmative defense?

With respect to Chapter 40B, affirmative defenses allow a zoning board of appeals to deny or condition a comprehensive permit if certain criteria can be demonstrated, and the denial will be upheld on appeal as a matter of law. Examples of affirmative defenses follow.





Comprehensive Permits Affirmative Defenses

1. Planning – Planned Production
- 2. Planning – Regional Housing Plan Pilot Program**
3. Affordable Housing Threshold has been met (10% of housing units are restricted for use by low- or moderate income households).





Comprehensive Permits Affirmative Defenses

4. The proposed development is too “large scale” for the community, based upon the number of housing units within the community.
5. The community has made “recent progress” towards its affordable housing threshold.





Comprehensive Permits Affirmative Defenses

6. The application is a “related application,” meaning that 12 months has not elapsed since the date of most recent pendency of a prior application, if the prior application did not contain low- or moderate-income housing.
7. **The ZBA has approved 3 or more comprehensive permits (each for 20 or more units) in the last 12 months.**





Other Provisions

- Smart growth would become a key component of affordable housing development.
- Mixed uses would be allowable in comprehensive permit developments.
- Communities could establish local programs to create housing that counts toward their affordable housing threshold.





Other Provisions

- Communities could hold a public meeting with local officials and the developer to create a full understanding of the proposal before a determination of project eligibility is issued.
- So the community can provide informed commentary on the proposal that must be considered by the subsidizing agency.





Other Provisions

- Planning – The Housing Appeals Committee shall receive evidence of and shall consider a city or town's master plan, comprehensive plan, or community development plan and the results of a city or town's efforts to implement such plans.





Other Provisions

- **Massachusetts Housing Partnership Fund would collect fees from developers to provide technical assistance/consulting services to communities in which comprehensive permit applications have been made.**





Other Provisions

- DHCD would make planning and housing development information and resources available to assist communities.
- Contiguous communities could agree to share credit for housing developments where infrastructure and other costs are shared.





Getting to 10%

■ Rental Units

- If 25% of units are restricted to serve households with incomes no greater than 80% of the area median, all units would count.
- If 20% of units are restricted to serve households with incomes no greater than 50% of the area median, all units would count.





Getting to 10%

■ Ownership Units

- If 25% of units are restricted to serve households with incomes no greater than 80% of the area median, twice the number of restricted units would count.
- If 20% of units are restricted to serve households with incomes no greater than 50% of the area median, twice the number of restricted units would count.





Getting to 10%

■ Rental and Ownership Units

- If fewer than 25% of units are restricted to serve households with incomes no greater than 80% of the area median, only restricted units would count.



Getting to 10%

- Changes to the law will simplify how units count.
 - Community Preservation Act Units
 - Accessory Apartment Units
 - Group Home Units (DMR/DMH)
 - **Housing Units developed under Local Programs**
 - **Urban Center Housing/Tax Increment Financing Units**
 - Expiring Use Units





Contact Information

■ DHCD

One Congress Street,
10th Floor

Boston, MA 02114

Phone: 617.727.7001

Fax: 617.727.0133

www.mass.gov/dhcd

■ Mass Housing Partnership

Two Oliver Street

Boston, MA 02109

Phone: 617.338.7868

Fax: 617.338.8274

www.mhp.net

